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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

LAQUINTA NUNEZ CLARK,

Defendant and Appellant.

2d Crim. No. B229925
(Super. Ct. No. 2009013831)
(Ventura County)

LaQuinta Nunez Clark appeals from a judgment after conviction by the trial court of possession for sale of cocaine base (count 1, Health & Saf. Code, § 11351.5); possession of ammunition by a convicted felon (count 2, Pen. Code, § 12316, subd. (b)(1))¹; misdemeanor resisting a police officer (count 3, § 148, subd. (a)(1)); and misdemeanor attempt to destroy or conceal evidence (count 4, § 664, 135). The court found true an allegation that Clark was previously convicted of a prior serious or violent felony. (§§ 667, subds. (c)(1) & (e)(1), 1170.12, subds. (a)(1) & (c)(1).) The court also found true, but struck, allegations that Clark was previously convicted of a felony drug offense and served a prior prison term. (§§ 667.5, subd. (b), 1385; Health & Saf. Code, § 11370.2, subd. (a).)

The trial court sentenced Clark to eight years in state prison, consisting of eight years for count 1 and concurrent terms for counts 2, 3, and 4. The court awarded 173

¹ All statutory references are to the Penal Code unless otherwise stated.

days presentence credit, consisting of 115 days of actual time and 58 days of conduct credit. (§ 4019.)

Clark contends that he was entitled to an award of additional presentence credits under the most recent amendment to section 4019 on equal protection grounds. We reject the contention. Clark also contends, and the People agree, that the trial court should have stayed his sentence for attempting to destroy evidence pursuant to section 654.

FACTUAL AND PROCEDURAL BACKGROUND

In October, 2008, police officers searched Clark's home under authority of a warrant. Clark was present. They found .2 grams of cocaine, a digital scale, a box of .32 caliber ammunition, and a bag with a small amount of marijuana inside. Clark had a prior conviction for shooting into an inhabited dwelling, a serious felony. (§ 246.)

The officers arrested him for being a felon in possession of ammunition and took him to the jail. He had \$403 in his pocket consisting mostly of \$20 and \$10 bills. Clark resisted a detective's efforts to remove a plastic bag from between his buttocks during a strip search. The bag contained 9.84 grams of cocaine.

DISCUSSION

Equal Protection Claim

Under the version of section 4019 applicable to Clark, he is deemed to have served six days for every four days spent in actual custody. (Stats. 1982, ch. 1234, § 7.) Under the most recent amendment to section 4019, an eligible defendant is deemed to have served four days for every two days spent in actual custody. (Stats. 2011-2011, 1st Ex. Sess., ch. 12, § 35.) Clark contends that he is entitled to additional presentence credits under the most recent amendment, notwithstanding that it applies by its terms only to a defendant who committed crimes on or after October 1, 2011. (U.S. Const., 14th Amend.; Cal. Const., art. I, § 7; *In re Kapperman* (1974) 11 Cal.3d 542, 544-545.)

It is settled that equal protection principles do not require retroactive application of the amendment to section 4019, which was in place for eight months in 2010, and temporarily increased the rate at which eligible prisoners could earn presentence conduct. (*People v. Brown* (2012) 54 Cal.4th 314, 330 [prospective application of former

section 4019 (Stats. 2009-2010, 3d Ex. Sess., ch. 28, § 50) does not violate equal protection principles].) Prisoners serving time before that amendment's effective date were not similarly situated to those serving time after its effective date because they could not choose to modify their behavior in response to it. (*Brown*, at p. 329.) The same is true for those serving time before and after the effective date of the most recent amendment, a purpose of which is also to incentivize conduct.

Section 654

Clark's sentence for attempted destruction of evidence (count 4) should be stayed pursuant to section 654. Clark had a single objective when he resisted the detective during the strip search (count 3) and when he attempted to conceal evidence by hiding the cocaine between his buttocks (count 4). (*People v. Latimer* (1993) 5 Cal.4th 1203, 1211.)

DISPOSITION

The trial court is directed to correct the sentence, the court's minutes and the abstract of judgment consistent with the views expressed in this opinion. The trial court shall forward the corrected abstract to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Kevin G. DeNoce, Judge
Superior Court County of Ventura

Leonard J. Klaif, under appointment by the Court of Appeal, for Defendant and Appellant.

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